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2019 Legislative Update to Maine Employment Laws

AN OVERVIEW FOR EMPLOYERS

Welcome

- Questions are encouraged, however, some questions may have to be “parked” and discussed later
- Sign-In Sheet/COA
- Seminar Evaluations

*At MP, We Believe **People** Make the Difference*

We're with companies every step of the way through the employee experience. MP is here to help attract, engage, and retain top talent, so we can ensure that your people are empowered to make a difference.



Hiring



Payroll



Time



Benefits



HR



Wellness

Discrimination

The prejudicial treatment or consideration of a person, racial group, minority, etc. based on category rather than individual, excluding or restricting members of on the grounds of race, sex, or age

Discrimination

Discrimination

Under the **Maine Human Rights Act (MHRA)**, all Maine employers, regardless of company size, are prohibited from discriminating against current and prospective employees based on certain prescribed characteristics.

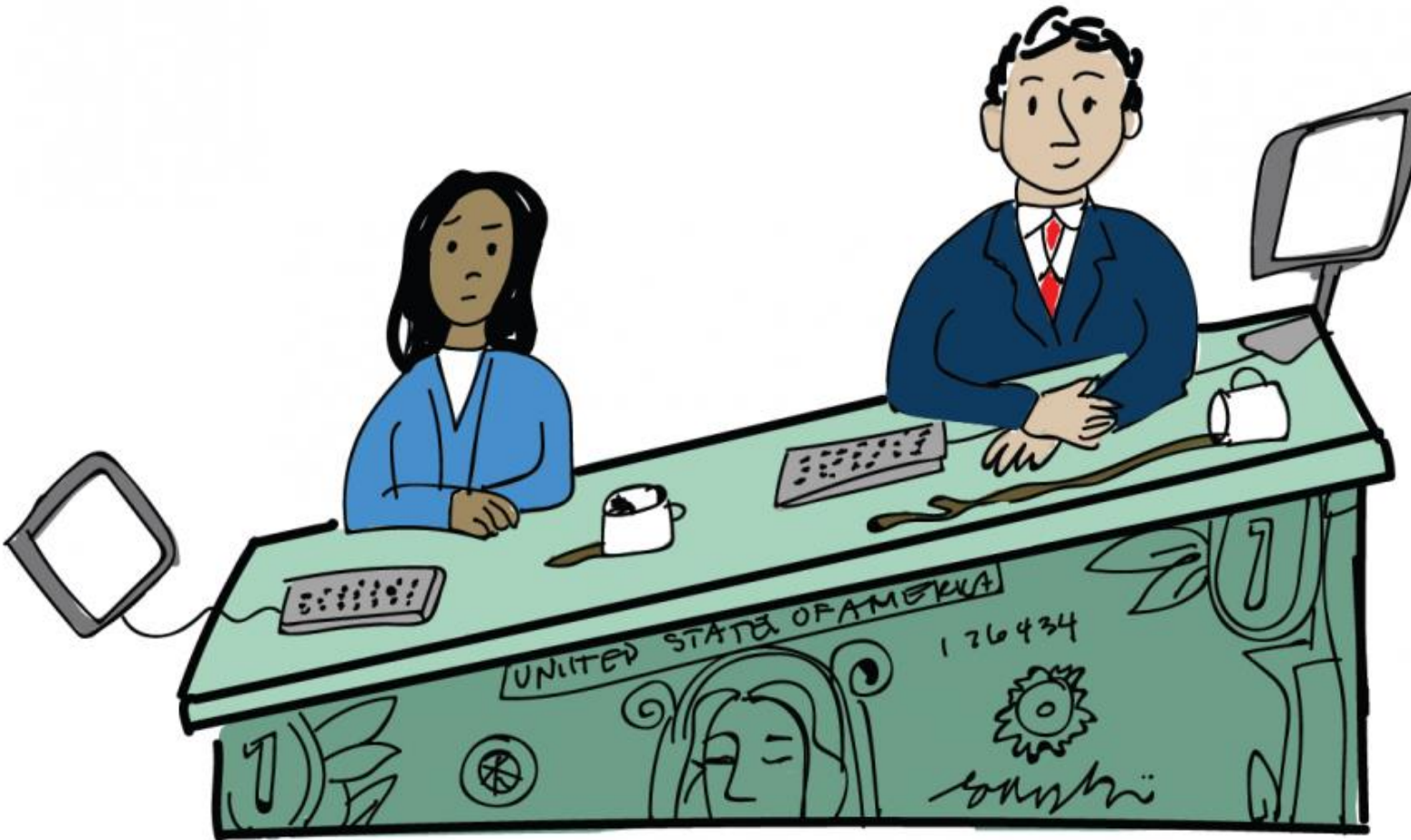
What Happened This Session?

Resolve, Directing Maine Human Rights Commission to Implement a Pilot Program:

- Investigate incidents of harassment due to housing status, lack of employment, and interference with access to public accommodations
- 2 Year Pilot Program – Interim Report by 9/15/2020

An Act to Protect Pregnant Workers

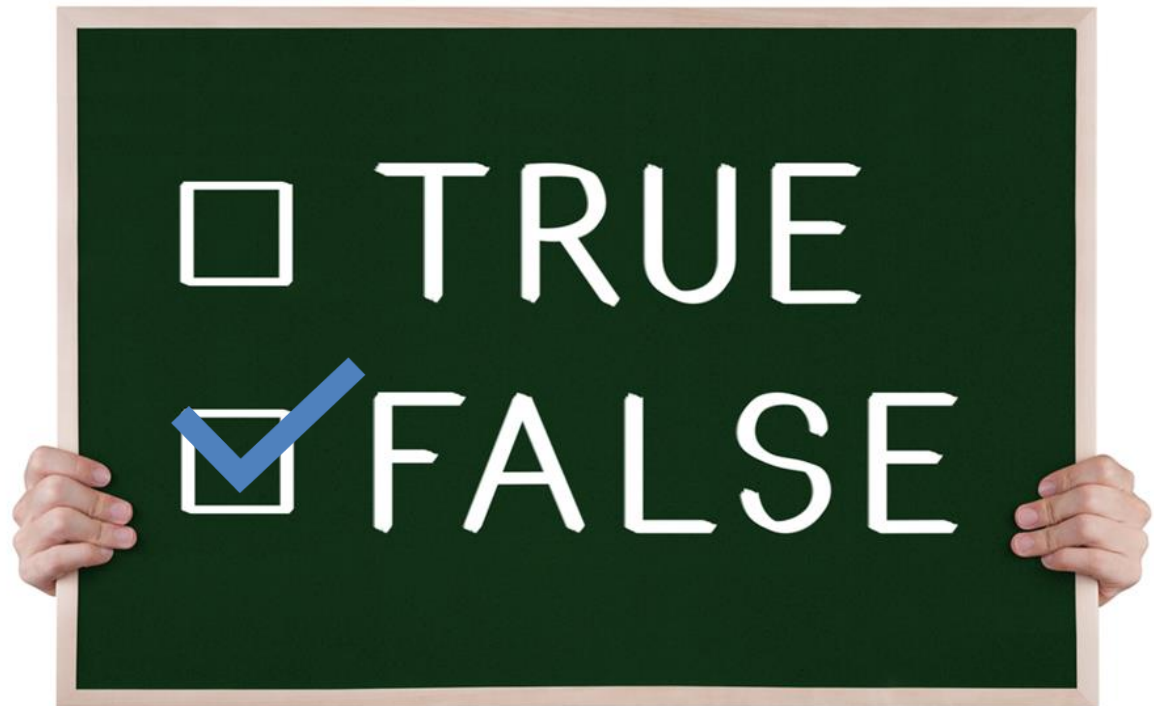
- Passed to be Enacted (6/19/2019)
- 5 MRSA 4553
 - Specific accommodations for pregnancy-related conditions
 - Unlawful discrimination to fail to provide a reasonable accommodation unless it would impose an undue hardship
 - Sets forth specific accommodations
- In Line with Federal Requirements



Equal Pay Law

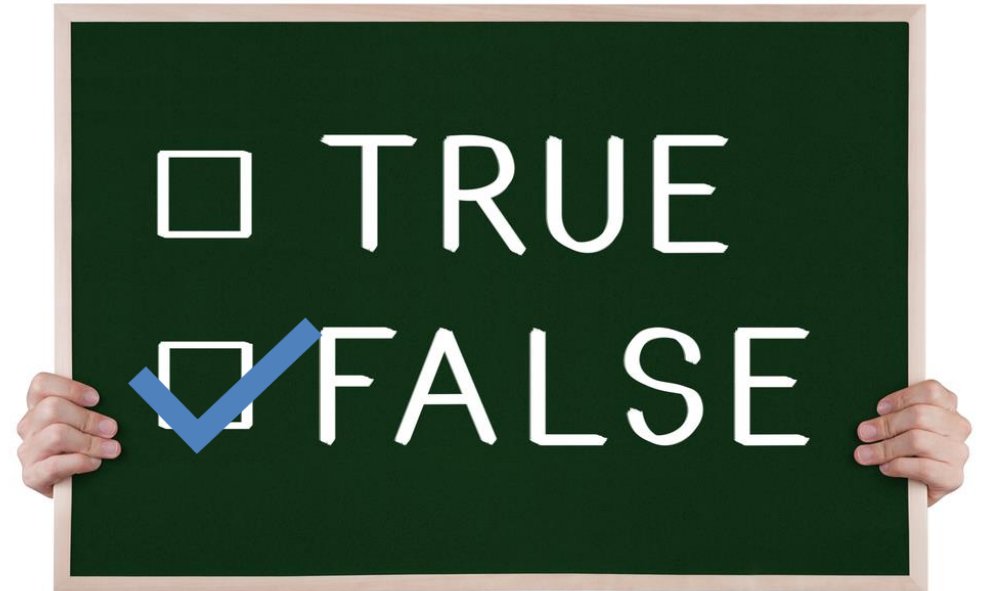
Equal Pay Law

Employers may restrict employees' discussions about their wages.



Equal Pay Law

Employers generally may not prohibit employees from discussing either their own wages or their coworkers' wages or from disclosing wage information to any person or entity.



Equal Pay Law

The **Maine Equal Pay Law** prohibits employers from discriminating against employees in the same establishment on the **basis of sex** by paying wages to any employee in any occupation in the state at a rate less than the rate it pays any employee of the opposite sex for comparable work on jobs requiring comparable skill, effort, and responsibility.

Equal Pay Law

Under the law it is unlawful for an employer to:

- **Reduce any employee's wage** rate in order to comply with the law
- Require or permit any person, as a condition of obtaining or keeping a job, to **work without monetary compensation** or to agree **to return part of their compensation** to the employer
- **Discharge** or **discriminate** against any employee for invoking or assisting in any manner in the enforcement of the law

Equal Pay Act

As long as the following systems or circumstances do not discriminate on the basis of gender, an employer may apply different rates of pay when based on:

- Established seniority systems;
- Merit increase systems; or
- Shift differentials

What Happened This Session?

LD 278 “An Act Regarding Pay Equality”

- Signed April 12, 2019
- Employer cannot use or inquire about compensation history of a prospective employee from the prospective employee or a current or former employer of the prospective employee unless an offer of employment that includes all terms of compensation has been negotiated and made to the prospective employee, after which the employer may inquire about or confirm the prospective employee’s compensation history
- Employee can voluntarily disclose pay history (without prompting) and employer can confirm information prior to an offer
- Can inquire about compensation history under any federal or state law that specifically requires the disclosure for employment purposes
- Each violation:
 - Fine between \$100 and \$500
 - Ability to file a civil action



Sexual Harassment

Sexual Harassment

- The **Maine Human Rights Act** prohibits discrimination on the basis of protected class
- Sexual harassment is considered to be a form of unlawful discrimination
- Unwanted sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature which threatens job security, working conditions, or advancement opportunities is considered sexual harassment
- It is a violation of the law to retaliate against any person exercising his or her rights under the law

Sexual Harassment

- Title 26 M.R.S.A. §807 requires employers with **15 or more employees** in the workplace to conduct a sexual harassment education and training program for all employees
- Employers are further required to conduct additional training for **supervisory and managerial employees**
- Individual managers and supervisors may be held liable for sexual harassment as an employer

What Happened This Session?

An Act Concerning Nondisclosure Agreements in Employment

- Carried Over to Next Session
- Pre-employment and Employment Agreements
 - Cannot have a nondisclosures, non-disparagement, waiver or other provision that prevents and employee from disclosing or discussing discrimination between an employee and employer in the workplace, at work-related events, or off the employer's premises.
- Settlements, Separations and Severance Agreements
 - Unless the employee requests the term the employer cannot enter into a settlement, separation or severance agreement that has a provision that prevents the disclosure of factual information relating to a claim of discrimination, including harassment.
 - Specific required language concerning rights as the MHRC and DOL
 - Extension of timelines/deadlines for review



**Minimum
Wage**

State Minimum Wage

Effective **January 1, 2019**, state minimum wage is **\$11.00 per hour**

Effective **January 1, 2020**, state minimum wage will be increasing to **\$12.00 per hour**

City of Portland Minimum Wage

Effective **July 1, 2019**, the City of Portland minimum wage will be **\$11.11 per hour**

Service Employees

There are several state and federal prerequisites that must still be met before the tipped minimum wage can be used:



Service Employees

- ME labor law allows tipped employees to be paid a lower cash wage than the standard ME minimum wage
- **\$5.50 in tips** earned per hour can be deducted from their wage as a “Tip Credit”
- With the maximum tip credit taken, tipped employees must be paid a cash wage of **at least \$5.50 per hour**, for a total minimum compensation of **\$11.00 per hour (including tips)**

Service Employees

- Employees must regularly receive more **than \$30 a month** in tips in order to be classified as a “service employee.”
- Remember: No tipped employee should ever receive actual wages of less than \$11.00 per hour
- If the employee’s direct wage combined with earned tips do not average, on a weekly basis, the state or municipal required minimum wage, **the employer must pay the difference**

Service Employees

- ✓ Tip credit claimed by the employer cannot exceed the amount of tips actually received by the tipped employee
- ✓ All tips received must be retained by the employee except for a lawful tip pooling
- ✓ Tip credit may only be applied to a tipped employee who has been informed of the tip credit rules

What Happened This Session?

LD 81 – Signed 3/25/2019

An Act to Clarify Maine Law Regarding the Tips of Service Employees

- Attempt to bring statute into conformity with federal law:
 - This section may not be construed to prohibit an employer from establishing a valid tip pooling arrangement only among service employees that does not violate the federal Fair Labor Standards Act and regulations made pursuant to that Act.

What Happened This Session?

Overtime

- Under Maine's overtime law, an employer must pay each employee overtime in the amount of **1 ½ times** the employee's regular rate for hours work **in excess of 40** in a workweek
- An employer may not require an employee to work **more than 80 hours** of overtime in a consecutive two-week period
- An Act to Amend the Laws Governing Overtime (EMERGENCY) June 3, 2019
 - Public employees in fire protection or law enforcement are exempted from overtime requirements

Payment of Wages

- Maine law requires that employers must pay full wages to non-exempt employees on an established pay day that occurs at regular intervals of **no more than 16 days**
- An employee's pay (or wages) includes payment for **all hours worked, including tips, earned vacation pay, promised holiday pay, and earned commissions** that are definitely determined, due and payable

Payment of Wages

- Each payment must include wages earned within 8 days of the payday
- If the regular payday falls on a nonwork day must be paid no later than the **following business day**
- Provide a pay slip or check stub showing the name of the employer, the **name of the employee, the pay period, the hours worked by the employee, total earnings and itemized deductions**

Payment of Wages

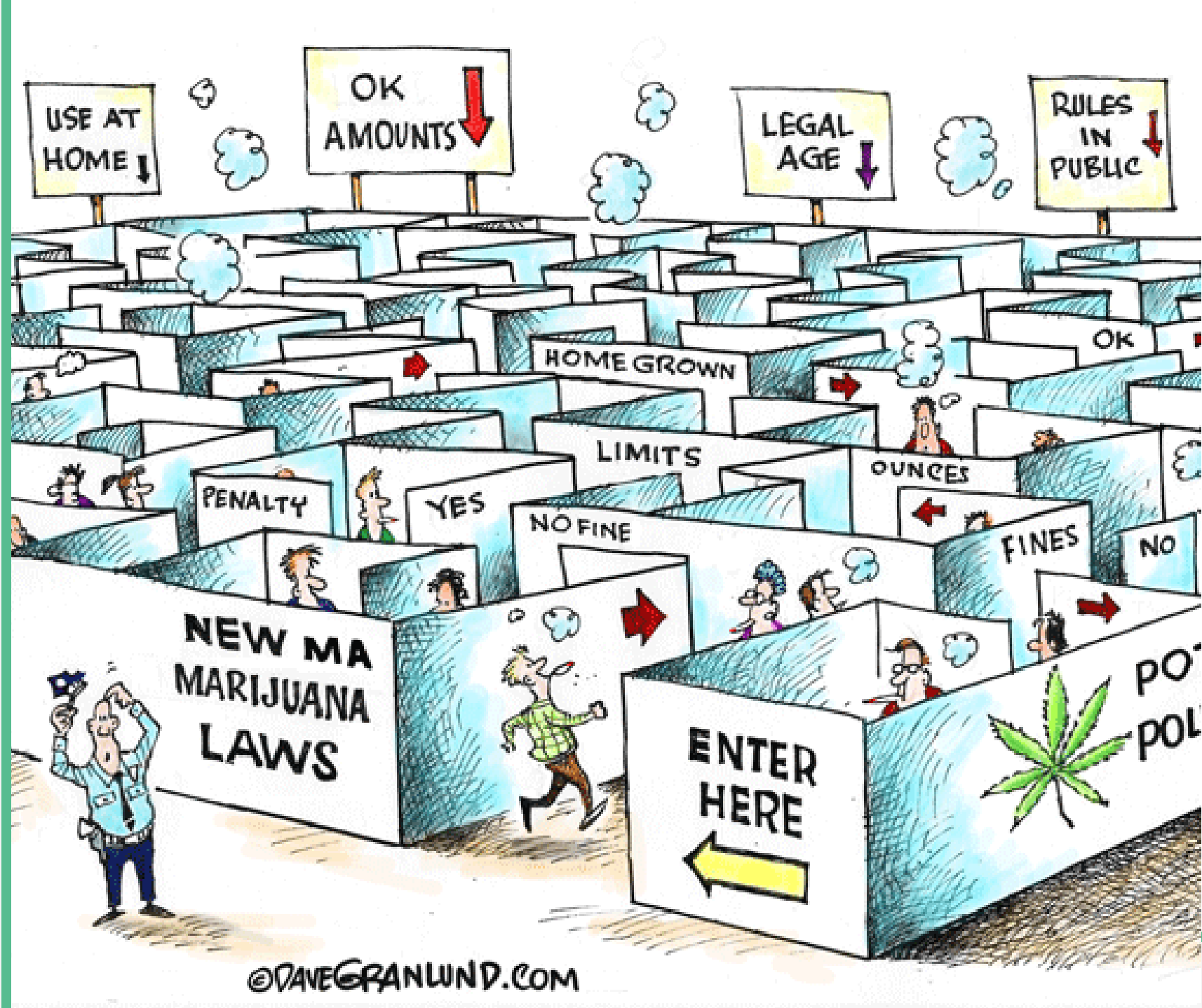
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What Happened This Session?

An Act to Prevent Wage Theft and Employer Accountability Signed 6/21/2019

- Remedies for violation of wage payment and recording statutes
 - May bring an action for injunctive relief
 - Employer liability for costs and attorneys' fees
 - "The Commissioner of Labor . . . May order an employer to cease its business operations if the commissioner . . . Determines that the employer has committed wage theft, the commissioner . . . Has previously determined the employer's practice or policy resulted in wage theft on more than one occasion or within the last 12 months and: A. the practice or policy resulting in the wage theft affects 10 or more employees; or B. The wage theft is equal to or greater than twice an employee's average weekly wage.

Marijuana at Work



Marijuana at Work

- State law allows a person who is at least **18 years of age** to lawfully possess a usable amount of marijuana for **medical use**
- Legal under state law with a medical record or other written documentation from a physician
- Employers are not required to accommodate use at work

Marijuana at Work

- In November 2016, Maine voters approved Ballot Question 1 – “...want to allow the possession and use of marijuana under state law by persons who are at least 21 years of age.”
- Under the law, employers may not refuse to employ or otherwise penalize a person **21 years of age** or older solely because he or she consumed marijuana **outside of the employer's property**

Marijuana at Work

- ✓ Do you have an anti-drug and alcohol policy?
- ✓ Does it include a statement particular to marijuana?
- ✓ Do you consistently enforce the policy?
- ✓ Is it communicated to applicants and employees?
- ✓ Have managers been trained in how to enforce the policy?

Marijuana at Work

Revise your policy to ensure it covers all aspects of your workplace including:

- Vehicles used for business purposes
- Employment duties performed at customer sites
- Work-related events and seminars
- Company owned parking lots and garages
- Etc.

What Happened This Session?

LD 1013 Signed 5/16/2019

An Act to Clarify the Disqualification from Unemployment Benefits of a Person Who Is Terminated from Employment for Being Under the Influence of Marijuana

- Changes the definition of misconduct under the statute:
- “Intoxication while on duty or when reporting for work, or unauthorized use of alcohol *or marijuana* while on duty *except for the use of marijuana permitted under Title 22, chapter 558-C.*”
- 22 MRSA 558-C – Medical Marijuana Statute
 - A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a qualifying patient or a caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding. This subsection does not prohibit a restriction on the administration or cultivation of marijuana on premises when that administration or cultivation would be inconsistent with the general use of the premises. A landlord or business owner may prohibit the smoking of marijuana for medical purposes on the premises of the landlord or business if the landlord or business owner prohibits all smoking on the premises and posts notice to that effect on the premises.



Leave of Absence

Maine Family and Medical Leave Act (MFMLA)

- MFMLA applies to private employers with **15 or more employees at one location.**
- Eligible employees may take up to **10 weeks** of unpaid leave in two years for the following reasons:
 - Birth of a child
 - Adoption of a child 16 years or younger
 - Serious illness of the employee or a covered family member
 - Organ donation
 - Death or serious health condition of a covered family member that occurs while he or she is on active military duty

Sick Leave

- There is **no Maine law** requiring private employers to provide employees sick leave, paid or unpaid
- Employers may choose to grant sick leave policy
- Employers with **25 or more employees** must allow an employee who receives paid leave (sick leave, vacation time, compensatory time) to use that time to **care for an ill immediate family member**

What Happened This Session?

An Act Authorizing Earned Employee Leave LD 369 Signed 5/28/2019

What we Know:

- The law applies to employers that, in the usual and regular course of business, have more than 10 (i.e., 11 or more) employees employed for more than 120 days per year.
- An employee will begin accruing paid leave at the time they start working. The employee accrues 1 hour of paid time off for every 40 hours worked, up to a maximum of 40 hours in a year, and may be required by an employer to wait 120 days before using the leave.
- The leave must be paid at the base rate that the employee had immediately prior to taking leave.
- The employee is entitled to the same benefits as the employer provides to employees out on other types of paid leave.
- The employee must give “reasonable notice” to the employer of the need for leave absent an emergency, illness, or other sudden necessity, and the leave must be scheduled to prevent undue hardship on the employer.
- The law takes effect on January 1, 2021.

What we Don't Know:

- Although the law provides that the employee's leave cannot cause undue hardship as determined by the employer, how will that be interpreted?
- What amount of notice is “reasonable” for an employee to provide? What constitutes an emergency or “sudden necessity,” and who decides?
- How will your current vacation or other paid time off policies be affected by the new law?
- Can an employer establish a minimum increment of paid leave that an employee must use at one time?
- Is it a use it or lose it law, or can some be rolled over to the next year?
- What kind of documentation is the employer entitled to, if any?
- What happens to accrued paid leave when the employee separates from employment?
- Are contract employees who work when they want covered?
- Can an employer reduce other paid time off that it already grants, or is this a “new” week of additional time off.

What Else Happened This Session?

An Act to Create Veteran-friendly Workplaces LD 1654 6/17/2019

- Employers shall allow veterans to take time away from work to attend scheduled appointments at medical facilities operated by the VA as long as the employee gives the employer notice.
- If paid leave is provided, must allow the employer to use paid leave if any available or unpaid if none is available.
- If no paid leave is provided, employer must permit the employee to take unpaid leave

Workers Compensation



What Happened This Session?

An Act to Improve the Workers' Compensation Act of 1992 LD 756 Signed 6/17/2019

- An increase to the maximum weekly compensation benefit for workers from 100 percent to 125 percent of the State Average Weekly Wage;
- Annual cost-of-living adjustments (up to 5%) on benefits for injured workers who are receiving total incapacity benefits after a five-year waiting period;
- An increase in the notice period, giving employees 60 days, up from 30 days, to report an injury;
- And an increase on the cap for partial incapacity benefits from 520 to 624 weeks (12 years) unless the Board determines that the case involves “extreme financial hardship due to inability to return to gainful employment,” in which case the term may be extended.

Termination



"You should check your e-mails more often. I fired you over three weeks ago."

Termination

- For all voluntary or involuntary separations, the employer must pay the employee all wages due by the **next regular payday** or **within two weeks** after the employee demands final payment
- An employee's wages includes payment for **all hours worked, including tips, earned vacation pay, promised holiday pay, and earned commissions** that are definitely determined, due and payable

Mass Layoff Notifications

- Under the **Maine Severance Pay Act (MSPA)**, employers with **100 or more employees** closes or conducts a mass layoff, it must provide at least **60 days' advance notice** to employees and the state and municipality where the establishment is located.
- Severance must be paid at a rate of **one week of pay for each year the employee worked** for the employer, with partial pay for any partial year

Mass Layoff Notifications

Severance does not need to be paid if:

- An employee worked for the employer for **fewer than three years**
- An employee has accepted employment with the employer in **another location**
- The closure or layoff is due to a physical calamity or final order of a government agency

What Happened This Session?

LD 201 Signed 5/16/2019

- Changed 60 days notice to 90 days notice
- Change in location of Penalty language
 - Fine of \$500 per day
 - Civil Violation

What Happened this Session: Unemployment

An Act to Protect Earned Pay Signed 6/20/2019

- Removes from the definition of remuneration received (for purposes of decreasing unemployment benefits):
 - Holiday Pay
 - Vacation Pay Exceeding 4 weeks' wages

Public Employers: Unionization

LD 1451 Signed 6/19/2019

An Act Providing Labor Unions with Reasonable Access to Current and Newly Hired Public Sector Workers

- Increases bargaining agent access to information and to ability to meet on the employer's premises during the workplace
- Right to conduct workplace meetings during lunch and breaks on the employer's premises

Questions?



Please take a few minutes to give us your feedback by completing the seminar evaluation form.

Thank you!

